

# End User Agreement



This End User Agreement (the "Agreement") is a legal agreement between yourself, the individual or enterprise (the "Customer"), who has acquired the hardware and software products contained in this packaging (the "Products"), and Livingston Enterprises, Inc., a California corporation ("Livingston"). You are requested to please carefully read the following terms and conditions.

**Notice:** By using the enclosed Products, you accept and agree to be bound by the terms and conditions of this Agreement. If you are not willing to be bound by the terms and conditions of this Agreement, then you must discontinue use of, and promptly return the Products to where you obtained them, or to Livingston, whereupon you will be given a full refund of your money, provided that there has been no damage to the Products which has been incurred due to your negligent use or handling thereof.

**1. Software License.** Livingston grants to Customer the non-exclusive, non-transferable right and license to use the applicable Livingston proprietary software (the "Software"), whether pre-loaded on the hardware, or acquired at any time by CD ROM, disk or electronically, as follows: Customer shall have the right to use, transmit, reproduce and/or copy the Software for operation, administration, security, host device emulation and client remote access purposes; provided however, that: (a) such use of the Software must be made in conjunction with Livingston Products, and (b) except for the "Remote Authentication Dial In User Service" ("RADIUS™") server software, which is provided to Customer in source code form, use of the Software shall be restricted to machine executable (binary) form.

**2. License Restrictions.** Customer agrees that it will not attempt to reverse engineer, decompile or disassemble any Livingston Software. Customer further agrees that it will not sublicense, rent, lease or assign any Livingston Software provided hereunder, except that Customer may assign the Software with the Products to a designated third party, provided that the assignee agrees to be bound to the terms and conditions contained in this Agreement as a condition of such assignment.

**3. Ownership and Copyright.** The Products provided to Customer hereunder are proprietary to Livingston and the Software is protected by copyright, under the United States copyright laws and certain international treaties. Customer acknowledges and agrees that, while it shall acquire title to the hardware, it is acquiring only the right to use the Software as provided for hereunder, and that all ownership and intellectual property rights not herein specifically granted to Customer are expressly reserved by Livingston. Customer agrees that it will not remove, modify or alter any copyright or other proprietary rights notice contained on the products, and will faithfully include all such notices on any copies of the Software that it makes.

**4. Limited Warranty/ Exclusive Remedies.** Livingston warrants to the benefit of Customer only, for a term of one (1) year from the date of delivery of the Products to Customer, that under normal use and service: (i) the hardware and the Software media shall be free from defects in materials and workmanship, and (ii) the Software will substantially perform the functions described in the applicable Product User's Manual. Livingston does not warrant that the Products will meet Customer's requirements or will operate in combinations that Customer may select for use, or that the operation of the Software will be uninterrupted or error-free, or that all Software errors will be corrected.



Livingston's sole obligation and liability under this limited warranty shall be, at Livingston's option, to repair or replace any defective hardware or Software media component, and/or to remedy any substantial non-performance of the Software to the functional descriptions set forth in the applicable Product User's Manual. If Livingston is unable to satisfy the foregoing limited warranty obligations during the warranty term, then Livingston shall, upon Customer's written request for termination of this Agreement and return of the Products, refund to Customer all sums paid to Livingston for the purchase and licensing of the Products hereunder. These are Customer's sole and exclusive remedies for any breach of warranty. This limited warranty gives you specific legal rights. You may have others, which vary from state-to-state or country-to country.

**5. Warranty Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 4 ABOVE, LIVINGSTON MAKES NO OTHER EXPRESS WARRANTIES. TO THE EXTENT AUTHORIZED BY APPLICABLE LAW, LIVINGSTON SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

**6. Limitation of Liability.** Livingston's cumulative liability to Customer, or any third party, for loss or damages resulting from any claim, demand or action arising out of or relating to this Agreement or the use of Livingston Products, shall not exceed the net amount paid to Livingston for the purchase and licensing of the Products. IN NO EVENT SHALL LIVINGSTON BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF LIVINGSTON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR SUCH DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

**7. U.S. Government Restricted Rights.** If the Products are acquired by or on behalf of a unit or agency of the United States Government, by GSA or otherwise, then the Products are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or in subparagraphs (c)(1) and (2) of the Commercial Computer Software--Restricted Rights, at 48 CFR 52.227-19, as applicable. Manufacturer is Livingston Enterprises, Inc., 4464 Willow Road, Pleasanton, California 94588. (510) 426-0770.

**8. Export Law Assurances.** Customer agrees and certifies that the Products will not be shipped, transferred or re-exported, directly or indirectly, into any country prohibited by the United States Export Administration Act and the regulations promulgated thereunder, and that use of the Products will not be prohibited by such laws.

**9. Term.** This Agreement shall be effective upon Customer's opening of the Product packaging and shall continue until terminated. Customer may terminate at any time by discontinuing use of the Products. Livingston may terminate this Agreement upon a material breach by Customer that remains uncured for a period of thirty (30) days after notice to Customer by Livingston specifying such material breach.

**10. Integration; Governing Law.** This Agreement represents the entire Agreement between the parties hereto and supersedes any prior or contemporaneous proposal, representation or understanding. All terms of any Customer purchase order or other ordering document shall be superseded by this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California, U.S.A. If the Products are distributed outside of the U.S.A., then the United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed and shall not apply to the performance or interpretation of this Agreement.

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